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July 28, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 9, 2005

Case Number: TSO-0196

This Decision considers the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and was granted a DOE access authorization in 1978. In August 1997, the individual submitted an Incident Report to the DOE indicating that he had been arrested for Driving Under the Influence (DUI) of alcohol. In June 2003, the individual submitted an Incident Report concerning an arrest involving domestic violence. In August 2003, the DOE conducted a Personnel Security Interview with the individual (the 2003 PSI). In addition, the individual was evaluated in March 2004 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations).

In September 2004, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Sections 710.8(h), 710.8(j), 710.8(l) of the regulations governing eligibility for access to classified material. Specifically, with respect to Criteria (h) and (j), the Operations Office finds that the DOE-consultant psychiatrist

diagnosed the individual as Alcohol Dependence without adequate evidence of rehabilitation and reformation. The DOE-consultant psychiatrist also found that the individual's alcohol dependence may cause a significant defect in judgment or reliability. The Operations Office also refers to a diagnosis of alcohol dependence without rehabilitation from a counselor whom the individual consulted in 2003 (the individual's counselor) and to statements made by the individual at his 2003 PSI. At that PSI, the individual indicated (1) that he drank six to eight beers pretty much every day over the last five years; (2) that he occasionally drove a car after consuming this amount of alcohol; (3) that his wife told him that he had a drinking problem; and (4) that, against the advice of his doctor, he continues to drink alcohol while taking the anti-depressant, Zoloft.

With respect to Criterion (1), the Operations Office cites certain information as indicating that the individual engaged in unusual conduct tending to show he is not honest, reliable or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress. Specifically, the Operations Office refers to the following two alcohol-related arrests:

(1) In May 2003, the individual was arrested on a charge of Domestic Assault and the arresting officer reported that the individual admitted to drinking prior to the arrest; and

(2) In March 1997, the individual was arrested for Driving Under the Influence of Alcohol. He registered a .097 on a Breathalyzer test at the time of his arrest.

See Notification Letter Enclosure 2 at 2.

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. In his initial response to those concerns, the individual asserted that he "neither agree[s] nor disagree[s]" with the DOE-consultant psychiatrist's diagnosis. He also identifies and corrects a number of what he characterizes as generally slight inaccuracies in the DOE-consultant psychiatrist's summary of the individual's life history. With respect to his May 2003 arrest, he stated that he did not assault his wife, and that the arrest was related to his wife's borderline personality disorder rather than his alcohol consumption. Individual's October 7, 2004 Request for Hearing.

The requested hearing in this matter was convened in June 2005 (hereinafter the "Hearing"). At the Hearing, the individual and his counsel did not contest the DOE-consultant psychiatrist's diagnosis of alcohol dependence. Accordingly, I find that the individual suffers from alcohol dependence subject to Criteria (h) and (j). The testimony at the Hearing focused chiefly on the concerns raised by the individual's past pattern of alcohol consumption, and on the individual's efforts to mitigate those concerns through abstinence from alcohol and recovery activities.

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost

latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. HEARING TESTIMONY

At the Hearing, testimony was received from six persons. The DOE presented the testimony of the DOE-consultant psychiatrist. 1/ The individual, who was represented by counsel, testified and presented the testimony of a longtime friend and Alcoholics Anonymous (AA) sponsor, his girlfriend, a co-worker/friend, and his supervisor.

A. *The DOE-consultant psychiatrist*

The DOE-consultant psychiatrist testified that in March 2004 he evaluated the individual for alcohol problems and his arrest for domestic assault in 2003. The DOE-consultant psychiatrist concluded that the individual met the criteria for alcohol dependence set forth in the Diagnostic and Statistical Manual for Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). At the Hearing, the DOE-consultant psychiatrist testified that the individual's history indicated an increasing tolerance of alcohol, consumption of alcohol in larger amounts and for a longer period than intended, unsuccessful efforts to cut down or control alcohol use, jeopardizing important social relationships because of alcohol, and the use of alcohol despite knowledge that it contraindicated a prescription medication (Zoloft) that he was taking. TR at 15-23. The DOE-consultant psychiatrist also found that the individual's heavy consumption of alcohol appeared to be evidenced by laboratory test results indicating that the individual had elevated liver enzymes at the time of his March 2004 evaluation. See TR at 24-26 and DOE Exhibit 12.

With regard to rehabilitation and reformation, the DOE-consultant psychiatrist testified that during his March 2004 evaluation, he believed that the individual did not seem to have an appreciation that alcohol was a problem for him. TR at 23. He testified that the individual's first step toward rehabilitation and reformation was to recognize this problem:

The first thing is to acknowledge that there is a problem with drinking and that cutting back from a six-pack or more per night to three beers per night and a six-pack or two on Saturdays and Sundays wasn't going to get the job done.

1/ As indicated by the testimony of the DOE-consultant psychiatrist (TR at 13-15), he clearly qualifies as expert witness in the area of addiction psychiatry.

TR at 26-27. The DOE-consultant psychiatrist further testified that in his March 2004 Report, he offered the individual two alternatives for demonstrating adequate evidence of rehabilitation from alcohol dependence:

[one] - attendance at AA a minimum of 150 hours with a sponsor at least three times a week for a minimum of a year, and then two years of abstinence; or, number two, attend a professionally led alcohol abuse treatment group a minimum of six months, including aftercare, with the bottom line of two years of total abstinence.

TR at 27. The DOE-consultant psychiatrist noted that the individual had consumed alcohol two days before his March 2004 interview. TR at 27-28.

Under questioning from the individual's counsel, the DOE-consultant psychiatrist testified that the individual's arrests for DUI and for an incidence of domestic violence resulted from the individual's dependence on alcohol.

[I] would put these incidents together in a big picture, in a package, to emphasize the difficulties alcoholism causes and to document that there is a problem with alcohol.

TR at 36. The DOE-consultant psychiatrist also indicated that based upon his interview with the individual and on the psychological assessment tests that the individual completed during his March 2004 evaluation, he did not believe that the individual had a problem with violence apart from his alcohol dependence.

I found, from the data that I reviewed, that alcohol was tied to irritability and conflict. . . . And as was stated earlier, that gets into a vicious cycle. My guess is that the alcohol might be the initiator, and I did not see any red flags that anger management would be an issue without alcohol.

TR at 63-64.

B. The Individual

The individual testified that he has been sober since March 20, 2004. TR at 163. He stated that following his divorce from his second wife in 2003, he learned that he had high blood pressure and decided to reduce his alcohol consumption. Then, following his March 2004 visit with the DOE-consultant psychiatrist, the individual made the decision to stop completely, based in part on the DOE-consultant psychiatrist's recommendation that he stop consuming alcohol.

And I'm thinking, "Okay, [the DOE-consultant psychiatrist] said it, [the individual's counselor] said it, you've got potential health problems, maybe I ought to just stop."

TR at 162. He testified that for about a month after making the decision to quit drinking, he continued to consume non-alcoholic beer, but has not had any since April 2004. TR at 175-176. He stated that after a couple of weeks of sobriety, he realized that the desire to drink was still there, so he spoke to his longtime friend who suggested that he start attending AA meetings and later became his AA sponsor. He attended his first AA meeting on April 16, 2004. He stated that he has been attending one AA meeting per week with his longtime friend and AA sponsor, and a total of three to four AA meetings on a weekly basis. TR at 167, 171. He now acknowledges that alcohol was a problem in his life, "sporadically, probably, over the last thirty years."

I guess I don't need it to be a problem anymore, get the monkey off my back and enjoy life.

TR at 166.

He said that in the Spring of 2004 he was becoming more involved with his girlfriend, and that she would visit with him three to five times a week during that period. He testified that they fixed meals together, and participated in gardening and other hobby activities. TR at 164.

The individual testified that he is a veteran and received counseling in the past for post traumatic stress disorder (PTSD). He stated that three or four months prior to the Hearing, he was doing a personal inventory in AA and realized that he still had issues with PTSD. He stated that he currently sees a counselor once a month to address the PTSD, and that it has helped him. TR at 170.

He stated that he has started taking college classes and intends to complete his Bachelor of Arts degree:

I took a semester off. I think I had twenty hours left to get a degree in 1985, and I took a semester off, and that semester lasted until about a year ago. I always thought that was unfinished business, and I'm doing it for personal reasons. So I've been working on that. That's keeping me very busy.

TR at 171. He concluded that he plans to remain abstinent from alcohol because his life is very much better now than when he was drinking. TR at 171.

When questioned by the DOE counsel, the individual described his approach to the twelve steps and the twelve traditions that he studies in his AA meetings.

I know they say you're supposed to go from step one and complete it and go to step two, and so forth, and you don't go on to the next one until you've completed it. I see it a little bit differently, in that it's a process, and . . . once you've been through it, you almost have to go back and do it again and do it again and do it again.

TR at 173. He also testified that he considers himself an alcoholic and that "I say that at every meeting." TR at 177. He testified that his girlfriend, his longtime friend and AA sponsor, and his supervisor are all people who he can turn to if he needs support to maintain his sobriety. TR at 177. He stated that he has made a personal commitment to a lifetime of sobriety and would probably attend AA for the rest of his life. TR at 185.

With respect to his 2003 arrest for domestic assault, the individual testified that he did not consider it to be an act of domestic violence. He explained that following an argument with his second wife, he was reclining in a lounge chair watching television when she passed by him. He said that he thought the argument was over and gave her "an affectionate swat on the butt." However, she "just went ballistic" and called the police.

It wasn't an intentional infliction of pain, it was just an affectionate pat on the butt.

TR at 178-180. He stated that he explained his version of the event to the police when they arrested him, and testified that no charges were ever filed in the incident. TR at 180.

C. The Individual's Longtime Friend and AA Sponsor

The individual's longtime friend testified that the individual was a friend of her late husband and that she has known him for approximately thirty years. She testified that she currently sees the individual two to three times a week. TR at 98-99. She stated that she lives near the individual and that she runs a commercial stable on her property where she boards and trains horses. TR at 83. She indicated that the individual also owns horses and is a regular guest at the frequent social events connected to her business.

We have parties at practically all the holidays and have a lot of food, and everybody brings their own booze, and we just go on hay rides and ride horses and just sit around and visit. Mostly, have a big campfire.

TR at 84. She stated that the individual's second wife had emotional problems and that she would visit at the individual's request to help convince her to take her prescribed medication. TR at 87. The longtime friend testified that in May 2003 the individual's second wife complained to her about the individual's consumption of alcohol, and shortly afterward left the individual.

Id. She reported that following his divorce from his second wife in September 2003, the individual

slowed down on his drinking and didn't drink a whole lot and started eating more and putting on weight and his color got better in his face, because he wasn't drinking that much.

TR at 89.

The longtime friend testified that the individual quit consuming alcohol on March 20, 2004. She stated that she encouraged the individual to attend AA meetings and became his AA sponsor. TR at 92. She stated that she has been active in AA since 1980 and has maintained her sobriety since then. She reported that she attends AA meetings with the individual once a week, and that he attends AA about four times a week. She stated that, to her knowledge, the individual has not consumed alcohol since March 2004.

I've even offered it to him. I know that shouldn't be done, but it has proved to me that he's quit.

TR at 94. The longtime friend reported that in her opinion the individual is sincere about maintaining his sobriety, and that his relationship with his girlfriend encourages this commitment. TR at 95-96.

When asked how she knew that the individual attended AA about four times a week rather than once a week with her, she replied:

Because I talk to him every day, and he tells me he's going, and I check with [the individual's girlfriend] and she tells me he goes, too, and I drive by [the AA meeting location] every once in awhile and see if [the individual's vehicle] is there.

TR at 101.

D. The Individual's Girlfriend

The individual's girlfriend testified that she has lived with the individual since November 2004. She said that she met the individual about four years ago, and began dating him in the autumn of 2003. TR at 134. She said that she enjoyed working with the individual at his ranch. TR at 135. She stated that initially she dated the individual mainly on weekends, but by the Spring of 2004 she was seeing him two or three times during the week as well as on weekends. TR at 154.

She testified that when they started dating, the individual did not drink alcohol around her very much, because she hardly ever drinks alcohol. TR at 137. She stated that she was aware that the individual was involved in a domestic violence incident in 2003, but that nothing like that has occurred in their relationship. She also reported that she has never seen him intoxicated. TR at 138.

She stated that she was aware at the time that the individual gave up drinking alcohol in March 2004 and that he began to attend AA meetings three or four times a week at about the same time. TR at 139-140. She testified that she believes that the individual has not consumed alcohol since March 2004 and that it is important both to herself and to the individual that he maintain his sobriety. TR at 140-142.

Well, I know, healthwise, he's feeling better not drinking and taking care of himself, and I think if he

cares about us, he won't go back. I know his job is very important to him.

TR at 152.

E. The Individual's Supervisor

The individual's supervisor testified that she has known the individual generally as a co-worker for more than ten years, and that four to six years ago the individual transferred into a position that she supervised. TR at 110. She testified that prior to the individual having his clearance removed in April 2004, she saw him multiple times daily. Since then, she speaks with him every day and sees him a couple of times a week. TR at 111. She testified that the individual

has always been a very, very dependable, good associate, with a lot of expertise in [his professional] area.

TR at 112. She said that lunches involving the individual and other co-workers rarely involved any alcohol consumption, and that she did not observe the individual drinking at the 2003 and 2004 office Christmas parties, which were held in private homes and where alcohol was available. TR at 116. She said that she knew the individual's second wife as a former co-worker and had heard that she and the individual were having some marital problems. She testified that when the individual was arrested for domestic violence in May 2003, the individual "was very, very quick and honest to share with me what had transpired." TR at 119-120. She described her reaction to the incident as follows:

At that point in time, I was very angry. I was angry with [the individual's second wife] that she would react the way she did, I thought she overreacted, but I was hopeful that, you know, if there was any way that they could work through those challenges, that they would.

TR at 119. She stated that the individual confided in her about his marital difficulties following this episode, and his eventual decision to end the marriage. TR at 120-122. She stated that the individual appears to be happy and well-adjusted in his current relationship with his girlfriend. TR at 122. She testified that the individual has shared with her his commitment to remain sober and to attend AA meetings. TR at 127.

F. The DOE-Consultant Psychiatrist's Additional Testimony

Following the testimony of the other witnesses, the DOE-consultant psychiatrist testified that the individual had demonstrated rehabilitation and reformation from the diagnosis of alcohol dependence to a reasonable degree of medical certainty.

One can never be a hundred percent, as you well know, but I think you're off to a very good start. It feels like you acknowledge that there was a problem, and I think attending [AA meetings] three or four times a week speaks very highly of you and speaks to a good chance of refraining from drinking again.

TR at 186. The DOE-consultant psychiatrist testified that although the individual had been abstinent for more than fourteen months rather than the full two years recommended in his March 2004 Report, he was confident that the individual would remain abstinent in the future, and that his risk of relapse was low. He therefore concluded that the individual had demonstrated adequate evidence of reformation and rehabilitation from the diagnosis of alcohol dependence. TR at 187-188.

IV. ANALYSIS

The individual believes that his fourteen months of sobriety, his recovery activities, and his dedication to future abstinence from alcohol fully mitigate the Criteria (h), (j) and (l) security concerns arising from his diagnosis of alcohol abuse and his arrests for DUI in 1997 and for domestic violence in 2003. For the reasons stated below, I conclude that the individual's arguments and supporting evidence on these issues resolve the security concerns.

A. The Criteria (h) and (j) Security Concerns

The testimony at the Hearing indicated that following the individual resolved to stop consuming alcohol on March 20, 2004, shortly after he was advised to do so by the DOE-consultant psychiatrist. On April 16, 2004, shortly after his security clearance was suspended, the individual began to attend AA meetings.

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set

policy on what constitutes rehabilitation and reformation from alcohol dependence, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. See, e.g., *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation). At the Hearing, the DOE-consultant psychiatrist concluded that the individual's demonstrated abstinence over the last fourteen months, his commitment to frequent attendance at AA meetings with a sponsor, and the changes that he has made in his style of living indicate rehabilitation and reformation from his diagnosis of alcohol dependence.

I agree with the DOE-consultant psychiatrist's conclusions. My positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the individual has maintained his sobriety since March 20, 2004, that he has committed himself to lifelong sobriety, and that he has shared that commitment with AA sponsor, his girlfriend and his supervisor. In addition, the individual has demonstrated an ability to conduct his social and recreational activities without alcohol. These positive developments are all significant factors which indicate rehabilitation and reformation from the diagnosis of alcohol abuse.

In light of these factors, I find that the individual has mitigated the DOE's Criteria (h) and (j) concerns.

B. The Criterion (1) Security Concern

I find that the individual's 1997 DUI arrest is clearly the result of the individual's alcohol dependence, and that the mitigation of the Criteria (h) and (j) alcohol concerns in this case concomitantly mitigates the Criterion (1) concern arising from that arrest.

With respect to the individual's 2003 arrest for domestic violence, the individual maintains that the incident was not an alcohol related assault, but that his wife simply overreacted to an "affectionate swat on the butt." TR at 178. I am not convinced that the individual's recollection of this incident is reliable. The police report indicates that the individual smelled of alcohol when the police arrived on the scene and that he admitted to drinking "a couple of beers" prior to the incident. DOE Exhibit 23 at page 6. However, I am convinced that the assault did not result in a physical injury to the individual's wife or in a criminal

charge being brought against the individual. Moreover, the individual's girlfriend testified at the Hearing that no incidents of domestic violence have occurred in the course of her relationship with the individual. The individual also testified that he receives monthly counseling for PTSD. I therefore find that the DOE security concern relating to the individual's May 2003 arrest for domestic assault has been mitigated by his rehabilitation and reformation from alcohol dependence and his other positive lifestyle changes since 2003.

V. CONCLUSION

For the reasons set forth above, I find that the Notification Letter's derogatory information under Criteria (h), (j) and (l) have been mitigated by sufficient evidence of rehabilitation and reformation from alcohol dependence and by the individual's other positive lifestyle changes. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: July 28, 2005